

From: [Inglin, Sonja A.](#)
To: [Barbara Nann/R6/USEPA/US@EPA](#)
Cc: [Cermak, John F.](#); [Jessica Hernandez/R6/USEPA/US@EPA](#); [Anne Foster/R6/USEPA/US@EPA](#); [Axe, Al](#)
Subject: San Jacinto River Superfund Site - San Jacinto River Fleet Issues
Date: 10/05/2011 10:20 AM

Barbara,

This email is submitted on behalf of International Paper Company ("International Paper"). In emails dated September 30, 2011 and October 4, 2011, counsel for MIMC has submitted to you a survey of the western boundary of the waste impoundments and other information in response to your emails dated September 21, 2011 and September 30, 2011 and Jessica Hernandez's email dated September 26, 2011. International Paper joins in the emails submitted on behalf of MIMC. Your September 30, 2011 email stated that EPA had made previous requests to MIMC for a survey of the western boundary of the waste impoundments. We are not aware of any prior requests for such a survey that were made to MIMC or to International Paper.

Along with MIMC, International Paper is committed to providing to EPA with the information it has requested and in engaging in a good faith effort to enter into access arrangements with San Jacinto River Fleet LLC ("SJRF"). While your September 21, 2011 email referenced Respondents' obligations under the AOC and UAO, the information and actions that you requested Respondents to take (and the deadline for doing so) do not appear to be required by the terms of either the AOC or the UAO. In that regard, Paragraph 53 of the AOC provides that "[w]here any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within fifteen (15) days after the Effective Date, or as otherwise specified in writing by the OSC." A request from counsel with a 14 day time period for a response and made long after the May 17, 2011 "Effective Date" of the AOC is not consistent with the requirements of Paragraph 53. In addition, as to the western boundary of the waste impoundments, all "necessary access agreements" appear to be in place - in the form of the consents to access previously provided by the McGinnes heirs (to the extent that they and not MIMC are the owners of the McGinnes Trustee tract) and the Port of Houston Authority. Paragraph 82 of the UAO states that "[i]f any area to which access is necessary to perform work under this Order is owned in whole or in part by parties other than Respondents, Respondents shall obtain, or use their best efforts to obtain, access agreements from the present owner(s) within thirty (30) days of the EFFECTIVE DATE of this Order." We are not aware of any current need for access for purposes of the UAO (either to the SJRF property or the western impoundments, as to which existing access agreements are in place). In addition, Paragraph 82 imposes an obligation to obtain or use best efforts to obtain access within a 30 day period after its "effective date," which raises questions as to Respondents' current obligation under Paragraph 83 to pursue access.

Irrespective of these issues, however, International Paper will continue to work with MIMC to address EPA's concerns and requests with respect to access to the former Big Star property and ownership and access to the western portions of the waste impoundments. In that regard, we look forward to your response to yesterday's email.

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9549364

-----Original Message-----

From: Axe, Al [<mailto:aaxe@winstead.com>]

Sent: Tuesday, October 04, 2011 3:35 PM

To: 'nann.barbara@epa.gov'; 'Hernandez.Jessica@epamail.epa.gov'; 'Foster.Anne@epamail.epa.gov'

Cc: Inglin, Sonja A.; Cermak, John F.

Subject: San Jacinto River Fleet

Barbara,

With respect to your attached email, please let me assure you that I am not trying to "avoid the issue at hand." I read Jessica's previous email as a request for documentation relating to the ownership of property along the western property boundary of the Virgil C. McGinnes, Trustee tract of land, the question being whether access agreements need to be obtained from Big Star or San Jacinto River Fleet, L.L.C. (SJRF) for that property. In response, I provided a survey prepared by Shine & Associates, Inc in conjunction with the recent purchase of the Big Star property by SJRF. In 1980, Big Star purchased a 150.07 acre tract of land that adjoined the Virgil C. McGinnes, Trustee tract along the tract's northern and western boundaries. The Shine & Associates survey is a resurvey of the 20.72 acre residue of this 150.07 acre tract by a Licensed State Land Surveyor, the 20.72 acres being that portion of the Big Star 150.07 acre tract that is currently above the line of mean high water. Since the resurvey does not show any residue along the western property boundary of the Virgil C. McGinnes, Trustee tract that was still owned by Big Star, this seems to clear up the property ownership issue. SJRF did not purchase any property along that boundary because the resurvey shows that Big Star no longer owned any property along that boundary.

I do not recall that my client "was the first to raise the issue with EPA about the potential that the western waste pit is not completely located with the McGinnes tract", as you state in your email. I assume that this issue may have been raised by Big Star because they raised the issue with the Respondents about the time Big Star entered into discussions with SJRF about the sale of their property. After the resurvey was done, however, the Respondents did not hear anything further from either Big Star or SJRF about the issue. Moreover, I discussed this issue with Brian Darnell of SJRF several months ago after we learned that Big Star was discussing the sale of the property to SJRF and he confirmed to me on the phone that the surveyors had determined that Big Star no longer owned property along the western boundary. Brian Darnell recently sent to EPA a copy of the Special Warranty Deed evidencing the purchase of the former Big Star property by SJRF. Apparently, both SJRF and its lender, The Frost National Bank, have accepted the Shine & Associates survey as an accurate depiction of Big Star's former property. Is anyone, including either Big Star or SJRF, raising this issue with EPA at this point?

Your email also states that "EPA has requested a survey from ... [my]...client on more than one occasion...". I have visited with my client and neither they nor I recall EPA having ever requested a survey of the western waste pit before the recent request. Again, since the resurvey of the Big Star property seems to have clarified the property ownership issue, we thought this would satisfy EPA's request and obviate the additional expense of another survey, particularly when this no longer appears to be an issue of concern to Big Star or SJRF.

To the extent that this explanation of our reasoning does not satisfy EPA, the Respondents will obviously need more time to followup on this issue. Since we are not aware of any complaints about access or trespass, we do not understand the urgency to address this issue within the very short 14 day period requested by EPA. Neither the AOC or the UAO appears to address this issue specifically; thus, we suggest that we discuss this issue after your upcoming meeting with SJRF (which we understand will occur on Thursday of this week) to decide what additional information, if any, is needed to clarify the access issue. Please let me know if you have any questions.

Thanks. Al

Albert R. Axe, Jr.

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-----Original Message-----

From: Nann.Barbara@epamail.epa.gov [<mailto:Nann.Barbara@epamail.epa.gov>]

Sent: Friday, September 30, 2011 5:00 PM

To: Axe, Al

Cc: Hernandez.Jessica@epamail.epa.gov; Foster.Anne@epamail.epa.gov; 'Inglin, Sonja A.'; 'Cermak, John F.'

Subject: RE: San Jacinto River Fleet

Al,

You seem to be avoiding the issue at hand. EPA has requested the survey (metes and bounds) of the western waste pit of which work has occurred for the removal and RI/FS. This issue of whether respondents have all the proper access agreements in place has not been resolved. Your client was the first one to raise the issue with EPA about the potential that the western waste pit is not completely located with the McGinnes tract. Note: I am speaking about the portion of waste pit that is above water. EPA has requested a survey from your client on more than one occasion and all you have provided is the survey for San Jacinto Fleet which is not what we requested. What EPA is asking for is the metes and bounds of the western waste pit along with the overlay of survey of the McGinnes to indicate that respondents have access from all the proper parties for the waste pits (specifically those portions above the tide line). I thank you for your prompt attention to this matter.

Barbara A. Nann

Assistant Regional Counsel

EPA Region 6 (6RC-S)

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-----"Axe, Al" <aaxe@winstead.com> wrote: -----

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To: Jessica Hernandez/R6/USEPA/US@EPA

From: "Axe, Al" <aaxe@winstead.com>

Date: 09/30/2011 03:52PM

Cc: Barbara Nann/R6/USEPA/US@EPA, Anne Foster/R6/USEPA/US@EPA, "'Inglin, Sonja A.'"

<singlin@bakerlaw.com>, "'Cermak, John F.'" <jcermak@bakerlaw.com>

Subject: RE: San Jacinto River Fleet

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Jessica, Barbara, and Anne,

On behalf of MIMC, attached please find a copy of a survey recently received by Respondents from San Jacinto River Fleet, L.L.C. (SJRF). This survey was obtained by SJRF in conjunction with its purchase of the property owned by Big Star Barge & Boat Company, Inc (Big Star) located in the vicinity of or within the San Jacinto River Waste Pits Superfund Site (Site). The survey was performed by a Licensed State Land Surveyor (LSLS), a surveyor qualified to demarcate the continuing ownership of land that has been inundated by the San Jacinto River. The survey shows the property, formerly owned by Big Star, that remains above the line of mean high water. This constitutes a total of 21.462 acres. Property below the line of mean high water was no longer owned by Big Star at the time of the sale to SJRF. The attached survey also shows the Virgil C. McGinnes, Trustee tract of land. Based on this survey, neither Big Star nor SJRF owns property on the western boundary of the western cell of the Site. The portion of the Site that has been inundated is now apparently owned by the Port of Houston Authority (POHA).

Respondents have previously provided EPA Region 6 copies of consents to access provided by the POHA. Respondents have also previously addressed access to the Virgil C. McGinnes, Trustee tract. Please let us know if you need additional copies of those consents to access.

The Respondents appreciate the 14 day extension granted in the attached email. At this time, Respondents are not aware of any upcoming work that is scheduled for the SJRF property; thus, the urgency indicated by the short deadlines is not readily apparent (and we are not clear about the appropriateness of EPA's directive under the UAO or AOC, but that can be addressed separately later should that be necessary). Based on your upcoming meeting with SJRF, we will hopefully have a better understanding of any concerns that SJRF may have with access and be able to address those concerns in a timely manner. We request that you consider that this may be best accomplished without a short deadline that places undue pressure on the relevant parties.

Please let us know if you have any questions. Thanks. Al

Albert R. Axe, Jr.

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From: Hernandez.Jessica@epamail.epa.gov [<mailto:Hernandez.Jessica@epamail.epa.gov>]

Sent: Wednesday, September 28, 2011 10:23 AM

To: Axe, Al

Cc: Nann.Barbara@epamail.epa.gov; Foster.Anne@epamail.epa.gov

Subject: Re: San Jacinto River Fleet

Al-

Thank you for your note. At this point our primary concern is that Respondents provide documentation regarding the metes and bounds of the western waste pit north of I-10 bridge. Respondents should have already in their possession documentation that demonstrates that Respondents have secured access from all the parties who may have a potential ownership interest in the western portion of the western waste pit. This information is required to be secured under both the Administrative Order on Consent for Removal and the Unilateral Administrative Order on Consent for Remedial Investigation and Feasibility Study. Moreover, under both agreements, Respondents are required to provide documentation regarding their work under these agreements when requested by EPA. To that end, on September 21, 2011, EPA requested (in an email from Barbara Nann) that Respondents provide the following:

- (1) survey of the parcel western waste pit
- (2) signed access agreements from the appropriate parties

With regards to securing access agreements with San Jacinto River Fleet, EPA is willing to grant Respondents an extension of 14 days to allow San Jacinto River Fleet to meet with EPA and have their questions answered before they negotiate an access agreement with you. However, we did not interpret your request for an extension to apply to EPA's request for documentation. Accordingly, it remains our expectation that those documents be provided by October 5, 2011.

Please let me know if you have additional questions or need further clarification regarding our request. I will be in meetings most of the day, but will be checking my email every couple of hours.

Many thanks.

Jessica

Jessica Hernandez
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[attachment(s) "Alta Page 1 of 3 San Jacinto River Fleet.pdf", "ALTA Sheet 2 of 3 SanJacintoRiverFleet.pdf", "ALTA Sheet 3 of 3 SanJacintoRiverFleet.pdf" removed by Barbara Nann/R6/USEPA/US]

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